

# WITHHOLDING TAX INDEMNIFICATION AGREEMENT

This Withholding Tax Indemnification Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between:

**Indemnit**: \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnit"),

and

**Indemnitee**: \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Indemnitee").

Each of the Indemnit and the Indemnitee may hereinafter be referred to individually as a "Party" and collectively as the "Parties."

## RECITALS

**WHEREAS**, the Parties have entered into that certain \_\_\_\_\_ Agreement dated as of \_\_\_\_\_, 20\_\_\_\_\_ (the "Underlying Agreement"), pursuant to which certain payments may be made by the Indemnit to the Indemnitee; and

**WHEREAS**, the Parties desire to allocate the risk and responsibility for any potential withholding tax liabilities, interests, penalties, or additions to tax that may arise in connection with payments made under the Underlying Agreement;

**NOW, THEREFORE** in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. TAX REPRESENTATIONS

1.1. The Indemnitee represents and warrants that it is a tax resident of \_\_\_\_\_ and is entitled to the benefits of the tax treaty between \_\_\_\_\_ and \_\_\_\_\_ for the purpose of reducing or eliminating withholding taxes on payments under the Underlying Agreement.

1.2. The Indemnitee shall provide to the Indemnit, on or prior to the date of the first payment under the Underlying Agreement, a completed, accurate, and duly executed Internal Revenue Service Form \_\_\_\_\_, or such other applicable tax withholding exemption certificate, form, or documentation as requested by the Indemnit or required by the applicable tax laws of \_\_\_\_\_.

## 2. INDEMNIFICATION FOR WITHHOLDING TAXES

2.1. If any taxing authority imposes, assesses, or claims any withholding tax (including any interest, penalties, or additions to tax associated therewith) on payments made by the Indemnit to the Indemnitee under the Underlying Agreement, the Indemnit shall immediately notify the Indemnitee in writing of such claim or assessment.

2.2. The Indemnit agrees to defend, indemnify, and hold harmless the Indemnitee, its affiliates, officers, directors, employees, and agents from and against any and all liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and tax professional fees) arising out of or resulting from:

- a. Any failure by the Indemnit to withhold the correct amount of tax from any payment made to the Indemnitee, except where such failure is directly caused by the Indemnitee's failure to provide accurate and timely documentation as required under Section 1.2;
- b. Any subsequent assessment, audit, claim, or demand by any local, state, federal, or foreign taxing authority for withholding

taxes, interest, penalties, or additions to tax in connection with payments made under the Underlying Agreement.

### 3. GROSS-UP PAYMENTS

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3.1. All payments made by the Indemnitor to the Indemnitee under the Underlying Agreement shall be made free and clear of, and without deduction or withholding for, any taxes, unless such deduction or withholding is required by applicable law.

3.2. If the Indemnitor is required by law to deduct or withhold any taxes from any payment, the Indemnitor shall pay such additional amounts (the "Gross-Up") as may be necessary so that the net amount received by the Indemnitee (after allowing for any withholding or deduction of tax on such additional amounts) shall equal the amount the Indemnitee would have received if no such deduction or withholding had been required.

### 4. CONTESTS AND COOPERATION

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4.1. The Indemnitee shall have the right, at its own expense, to control the defense, compromise, or settlement of any tax audit, challenge, or proceeding concerning withholding taxes subject to indemnification under this Agreement, provided that the Indemnitee keeps the Indemnitor reasonably informed of the progress of such proceeding.

4.2. The Parties agree to cooperate fully with each other in connection with any tax audit, dispute, or proceeding related to payments under the Underlying Agreement, including providing relevant documentation, receipts, and tax certificates within \_\_\_\_\_ business days of a written request.

### 5. GOVERNING LAW AND JURISDICTION

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5.1. This Agreement shall be governed by, and construed in accordance with, the laws of \_\_\_\_\_, without giving effect to any conflict of law principles.

5.2. Any legal action, suit, or proceeding arising out of or relating to this Agreement shall be brought exclusively in the courts of \_\_\_\_\_.

### 6. MISCELLANEOUS

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6.1. This Agreement constitutes the entire agreement between the Parties regarding withholding tax indemnification and supersedes all prior agreements, oral or written, regarding this subject matter.

6.2. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the Parties hereto have caused this Withholding Tax Indemnification Agreement to be executed by their duly authorized representatives as of the date first written above.

**INDEMNITOR:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDEMNITEE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_